

CHAPTER VI - OTHER TAX RECEIPTS

6.1 Results of audit

Test check of the records of the Registration and the Commercial Taxes departments during 2007-08 revealed non/short levy of fee, duty and loss of revenue etc. amounting to Rs. 6.25 crore in 347 cases, which fall under the following categories:

(Rupees in crore)			
Sl. No.	Category	No. of cases	Amount
• STAMPS AND REGISTRATION FEES			
1.	Short levy of stamp duty and registration fee	3	0.06
2.	Other cases	332	2.45
Total		335	2.51
• PGT/ENTRY TAX			
1.	Non/short levy of tax	11	2.07
Total		11	2.07
• ELECTRICITY DUTY			
1.	Short levy of electricity duty	1	1.67
Total		1	1.67
Grand Total		347	6.25

During 2007-08, the departments accepted non/short levy of fee, duty and loss of revenue and other irregularities of Rs. 4.02 crore in 125 cases of which 119 cases involving Rs. 3.20 crore had been pointed out in audit during 2007-08 and rest in earlier years.

A few illustrative cases involving loss of revenue of Rs. 1.73 crore are discussed in the succeeding paragraphs:

STAMP AND REGISTRATION FEES

6.2 Short levy of stamp duty and registration fees

Under the provisions of Indian Stamp Act, 'power of attorney' includes any instrument (not chargeable with a fee under the law relating to court fee for the time being in force) empowering a specified person/persons to act for and in the name of the person executing it. Further, as per schedule of the Act when power of attorney is given for consideration and authorising the attorney to sell any immovable property, the instrument is treated as a deed of conveyance and duty and registration fee is chargeable as a conveyance for consideration or market value (determined by Deputy Commissioner), whichever is higher.

Test check of deeds on power of attorney registered in District Sub-Registrar Office, Palamu, during 2006-07 revealed that two owners of property had separately given power of attorney to sell their property to three persons. Though, no mention regarding handing over of the consideration value to the owners of the property was made in the deed, both the owners received Rs. 51,000 as advance against land from holder of power of attorney as part of consideration. Stamp duty and registration fee was levied and realised on the amount received as advance instead of the market value of Rs. 1.16 crore. This resulted in short levy of stamp duty and registration fee of Rs. 5.76 lakh.

After the case was pointed out in October 2007, the District Sub-Registrar stated that the stamp duty had been levied on the consideration value of Rs. 51,000 under Article 23 of the Act and as the deed did not transfer title, it was not a conveyance. The reply is not in order as the instruments had consideration and the attorney was authorised to sell the property, it was to be treated as deed of conveyance and stamp duty and registration fee levied accordingly.

The matter was reported to the Government in February 2008; their reply has not been received (November 2008).

ELECTRICITY DUTY

6.3 Short levy of electricity duty

Under the provisions of Bihar Electricity Duty Act, 1948 (adopted by the Government of Jharkhand), the State Government notified in August 1993, the rate of electricity duty for mining purposes in all premises where the total load exceeded 100 British horse power, to be 15 paise per unit of energy sold or consumed. The duty on sale of electrical energy for industrial purposes is leviable at the rate of two paise per unit. It has been judicially held¹ that the process of mining comes to an end only when the ore extracted from the mines is washed, screened, dressed and then stacked at the mining site.

Test check of the records of Jharia Commercial Taxes Circle in March 2008 revealed that an assessee, engaged in mining activity, consumed 12.86 crore units of electrical energy in mining activity/washing of coal between 2000-01 and 2004-05. The assessing authority while finalising the assessments in

¹ Chowgule & Co. Vs Union of India (1981) 47 STC-124 SC.

December 2006 incorrectly levied electricity duty at the rate of two paise per unit treating it as industrial consumption instead of 15 paise per unit prescribed for mining purposes. This resulted in short levy of duty of Rs. 1.67 crore.

After the case was pointed out in April 2008, the Deputy Commissioner of Commercial Taxes stated that the matter would be reviewed. Further reply has not been received (November 2008).

The matter was reported to the Government in May 2008; their reply has not been received (November 2008).